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# Courts and Temperance “Ladies”

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# Courts and Temperance “Ladies”

Richard H. Chused\*

**ABSTRACT:** In 1873 and 1874, parts of southern Ohio were gripped by a remarkable string of marches, religious gatherings, and sit-ins by conservative, Christian, white women intent on shutting down the distribution of alcohol in their communities. A fascinating series of issues relating to the use of legal institutions to control these demonstrative women arose during these “temperance crusades.” Many women in Hillsboro opposed using available legal avenues to suppress the liquor trade, preferring strategies based on moral suasion. But, as with other major controversies in our history, aspects of the temperance crusade ended up in court despite the desires of many to avoid such forums. When liquor trade supporters sought injunctions against the sit-ins and marches, murmurs of discontent among the women could be heard on the town’s streets. But once the court hearings began, crusaders worked together to protect their interests. They regularly occupied large segments of courtroom public seating areas and participated in some aspects of the legal proceedings. Their entrance into the traditionally male judicial domain had a profound influence on the progress of the movement and the camaraderie of the women. It convinced them that public actions could alter social patterns and reconstruct cultural norms. A major part of that influence was first felt in the small-town courts of southern Ohio. This article tells the story of the crusades—the women who participated in the marches, their roles in judicial proceedings brought by liquor distributors, the impact of their willingness to participate in political movements, and the long-term social movements they helped generate.

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## INTRODUCTION

In 1873 and 1874, large groups of conservative, Christian, white women intent on shutting down the distribution of alcohol in southern Ohio undertook a remarkable string of marches, religious gatherings, and sit-ins in bars and saloons. Leaving the sanctuary of their homes, they carried an aura of moral responsibility and upright character with them as they entered bars filled with smoking and imbibing men and prayed on the streets in front of drinking establishments for weeks on end. Many men were incredulous that the respectable women of southern Ohio were capable of organizing daily prayer sessions and well-orchestrated marches into male domains. The immediate catalyst for the movement was a speech given by Dr. Diocletian Lewis, a believer in God, gymnastics, and temperance. He frequently gave orations urging women to pray at bars for the deliverance of intemperate souls, but usually he was politely received and ignored.<sup>1</sup> On a few occasions his plan to use prayer to obstruct liquor traffic led to small and short-lived demonstrations.<sup>2</sup> But his speech on "The Duty of Christian Women in the Cause of Temperance," delivered on December 23, 1873, before a group of women in Hillsboro, Ohio, led to an outpouring of temperance fervor. The resulting "crusade" spread like wildfire across the country's midsection, choking off the flow of alcohol in over 250 communities.<sup>3</sup> After the demonstrations ebbed and a sense of normalcy returned to the liquor trade, women active in the movement established the Woman's Christian Temperance Union—a group that became the largest suffrage organization in the country by the 1890s.<sup>4</sup>

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1. Lewis made his appeal about 300 times before his arrival in southern Ohio. Ruth Bordin, "A Baptism of Power and Liberty": *The Women's Crusade of 1873-1874*, 87 OHIO HIST. 393, 394 (1978).

2. In 1858, fifty women prayed in the saloons of Dixon, Illinois, for six days until the saloons closed. Battle Creek, Michigan, was the site of another effort the same year. Demonstrations also occurred in Manchester, New Hampshire, in 1869, and in Fredonia, New York, only ten days before Lewis showed up in Hillsboro, Ohio. *Id.*

3. *Id.* at 395-96. According to Bordin, crusades occurred in 130 towns in Ohio, 36 in Michigan, 34 in Indiana, 26 in Pennsylvania, 17 in New Jersey, and a scattering of sites in other states. Women took actions in 23 states and eventually in a few large cities, including Cleveland, Cincinnati, Chicago, Philadelphia, and Brooklyn. Hundreds of breweries shut down for a time.

4. RUTH BORDIN, *WOMAN AND TEMPERANCE: THE QUEST FOR POWER AND LIBERTY, 1873-1900*, at 140 (1990).

Though these events have been well described by historians,<sup>5</sup> a fascinating series of issues relating to the power of women to alter the atmosphere and power dynamics of previously male spaces arose during the temperance crusades in Ohio. Many women in Hillsboro opposed using available legal avenues to suppress the liquor trade,<sup>6</sup> preferring strategies based on moral suasion. But, as with other major controversies in our history, aspects of the temperance crusade ended up in court despite the desires of many to avoid such forums. When liquor trade supporters and bar owners sought injunctions against the sit-ins and marches, on the ground that they were nuisances, murmurs of discontent could be heard on the town's streets. But once the court hearings began, crusaders worked together to protect their legal interests just as they had previously cooperated to shut down the liquor trade. They regularly occupied large segments of courtroom public seating areas and participated in some aspects of the legal proceedings. Their entrance into traditionally male judicial domains, like their invasions of drinking establishments, had a profound influence on the progress of the movement and the camaraderie of the women. Historians have noted that the crusades had a transformative impact on some of the women participants.<sup>7</sup> It convinced them that public actions could alter social patterns and reconstruct cultural norms. The depth of the transformation is most keenly revealed in a lengthy series of articles published almost daily in the *Cincinnati Commercial*. The paper closely covered the demonstrations, profiled many of the participants, and published partial transcripts of court proceedings. The articles provide an intimate look at the day-to-day progress of the crusades and are a rich resource for exploring the ways in which women used their moral authority to influence male culture in southern Ohio. This essay tells that story.

## I. BACKGROUND OF THE NUISANCE LITIGATION

The temperance crusade explosion did not appear without warning. Organized opposition to the consumption of alcohol was part of the American

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5. For the best sources on this topic, see Bordin, *supra* note 1, and BORDIN, *supra* note 4. See also RUTH BORDIN, FRANCES WILLARD: A BIOGRAPHY (1986); JACK S. BLOCKER, JR., "GIVE TO THE WINDS THY FEARS": THE WOMEN'S TEMPERANCE CRUSADE, 1873-1874 (1985); JED DANNENBAUM, DRINK AND DISORDER: TEMPERANCE REFORM IN CINCINNATI FROM THE WASHINGTONIAN REVIVAL TO THE WCTU (1984); CHARLES KYNETT CARPENTER, THE ORIGIN OF THE WOMAN'S CRUSADE AND THE W.C.T.U. (1949).

6. The sale of alcohol to be consumed at the point of sale was illegal in Ohio from at least 1854. In addition, family members or others harmed by the actions of a drunken person or alcoholic could sue the person who sold the inebriate drink. Both provisions were contained in An Act to Provide Against the Evils Resulting From the Sale of Intoxicating Liquors in the State of Ohio, 1854 Ohio Laws 153.

7. Bordin, *supra* note 1, at 402. The first-hand accounts of the crusade cannot be read without feeling the excitement experienced by these women and their growing conviction that anything was now possible. The women themselves saw the crusade as a watershed, an experience that changed their self-conception. They articulated these feelings at Woman's Christian Temperance Union conventions and whenever and wherever they gathered for the rest of their lives.

political landscape since shortly after the founding of the Republic. Beginning with the creation of the first temperance organizations in Massachusetts during the 1820s, hundreds of thousands of Americans became involved in actions to reduce or eliminate the consumption of alcoholic beverages. Before the 1850s, the bulk of activity involved moral and religious suasion. But the gradual breakdown of tight-knit small town life in developing towns and cities, the movement of men to the frontier,<sup>8</sup> the economic and social dislocations caused by the Panic of 1837 and later monetary crises, and the arrival of large numbers of immigrants ruptured many of the links between social or religious disapproval and civic behavior.<sup>9</sup> Groups seeking total prohibition of alcohol emerged by mid-century. During the 1850s, women pouring alcohol from smashed containers in bars became a fairly common activity.<sup>10</sup> But the intensity and breadth of the temperance crusades in southern Ohio, the spread of the movement to many other parts of the country, and the active public role played by large numbers of conservative women was different than in any prior events.

The women who took to the streets of Hillsboro, Ohio, were not the sorts typically involved in organized, mass participation, public, political movements. They came, according to Charles Isetts, from "the upper crust of [town] society"—mostly women from white, wealthy, religious families of long standing in the community.<sup>11</sup> Using a list of crusaders published in a local paper together with 1870 Census data, Isetts discovered that families with crusade members owned the bulk of Hillsboro's wealth, were virtually all white and native-born, and had male household heads with white-collar jobs or successful skilled craftsman positions. Only five percent of the crusaders were immigrants,<sup>12</sup> whereas about three-fourths of the non-elite household heads of Hillsboro were immigrants or black.<sup>13</sup> The crusades clearly were dominated by the town's upper crust, on edge during the post-Civil War era after slaves were freed, large-scale immigration resumed, and economic difficulties endangered their well-being. Perhaps the class and ethnic differences fueled the stunning intensity and fervor of the crusades. J. H. Beadle, the most frequent

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8. In general, men constituted a significant majority of those on the edge of the frontier for about a decade. After that, the arrival of women, religious organizations, social groups, and, sometimes, the railroad changed the atmosphere in many Western communities. But the decade of early development provided plenty of time for saloons to gain a foothold. A particularly good history of frontier development is told by PAULA PETRIK, *NO STEP BACKWARD: WOMEN AND FAMILY ON THE ROCKY MOUNTAIN MINING FRONTIER*, HELENA, MONTANA, 1865-1900 (1987).

9. This sort of shift in cultural values occurred on a broad scale in the young Republic. The widely held belief at the turn of the nineteenth century that property ownership, rational debate, and participation in governance would lead men to behave in the best interests of the country fell aside before the middle of the nineteenth century.

10. DANNENBAUM, *supra* note 5, at 196.

11. Charles A. Isetts, *A Social Profile of the Women's Temperance Crusade: Hillsboro, Ohio*, in *ALCOHOL, REFORM AND SOCIETY: THE LIQUOR ISSUE IN SOCIAL CONTEXT* 101, 108 (Jack S. Blocker, Jr. ed., 1979).

12. *Id.* at 107.

13. *Id.* at 108.

commentator in the *Cincinnati Commercial* on the demonstrations, certainly thought so. Several months into the movement he wrote that it was pitting Catholic against Protestant and native-born against German, as well as one political faction against another.<sup>14</sup> At least in part, the crusade was a culture clash.

Newspaper reports about demonstrations at one liquor establishment, the Palace Drug Store,<sup>15</sup> provide a particularly vivid account of the zeal of the crusade. The owner of the business, Dr. William Henry Harrison Dunn, was among the most stubborn opponents of the southern Ohio crusaders. His obstinacy became a rallying point and, eventually, a subject of legal controversy. On Saturday morning, January 24, 1874, the Hillsboro women made one of numerous pilgrimages to the front and back doors of his store, pledging to remain there all day. Even assuming the reporter recalling the scene was a fervent supporter of the crusaders' cause, his description of the Palace Drug Store demonstration is remarkable. "Saturday morning a bitter cold wind made it very uncomfortable on the streets," he reported. "[M]any doubted their ability not only to carry out the determination, but of their being able to hold even a short prayer meeting."<sup>16</sup>

But promptly at 10 o'clock this determined army were seen coming up from the Presbyterian Church, stopping . . . in front of Mr. Dunn's drug store, and as the first song, with the enthusiastic chorus, "I am glad I'm in this army"<sup>17</sup> rose on the air, it carried conviction to the large crowd that had gathered around that they were terribly in earnest and would endure all things until victory crowned their every effort. . . . [M]en wondered at their persistent determination, for the wind blew so bitterly cold that men could scarcely keep warm but by constant exercise, yet those brave-hearted women kneeling on that freezing pavement utterly regardless of the cold, showed the invincible spirit that was within them, and with one accord for almost six hours

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14. "Beadle" is appended as author of *Correspondence*, CINCINNATI COMMERCIAL, Mar. 18, 1874.

15. Do not be confused by either the appellation "Dr." for Dunn or the label "drug store" for his establishment. The medical profession was just beginning to professionalize in the 1870s. Most doctors self-declared their life's work. Furthermore, drug stores dispensed anything that the proprietor claimed was a cure-all, including opiates, cocaine, and alcohol. It was the patent medicine era. Only with the adoption of the Pure Food and Drug Act by Congress in 1906 did false claims about cure-alls fade. Pure Food and Drug Act, ch. 3915, 34 Stat. 768 (1906).

16. J. CINCINNATI COMMERCIAL, Jan. 29, 1874. The untitled article is signed "J." The author probably was J. H. Beadle, who wrote many of the pieces on the crusades for the newspaper. He appended his full name to much of his work in the paper, so we cannot be sure Beadle wrote this particular item. Later in 1874, he published a book on the crusades, J. H. BEADLE, WOMEN'S WAR ON WHISKEY: ITS HISTORY, THEORY, AND PROSPECTS (1874), but this volume does not contain a story like the one in the text. Most of his journalistic endeavors came after the crusades. He moved out West, wrote for newspapers in Utah, and published some anti-Mormon tracts before moving back to the East. For a brief biography of John Hanson Beadle, see 27 NATIONAL CYCLOPAEDIA OF AMERICAN BIOGRAPHY 344 (J.T. White ed., 1957).

17. This is a well-known hymn entitled "The Sunday School Army." NORTH CAROLINA CHRISTIAN ADVOCATE, ZION'S SONGSTER; HYMNS DESIGNED FOR SABBATH SCHOOLS, PRAYER, AND SOCIAL MEETINGS, AND THE CAMPS 38 (1864).

kept up two prayer meetings, one at the front and the other at the back door.<sup>18</sup>

From this and other descriptions of the events in Hillsboro, it is clear that the souls of the crusading women were deeply troubled by the alcohol trade. Otherwise, a figure like Dr. Diocletian Lewis, even though somewhat successful on previous occasions at getting women to use prayer to shut down saloons,<sup>19</sup> would never have triggered such an outpouring of passion. A series of causes made Hillsboro a likely spot for the crusades to emerge. A long series of failed efforts to control consumption of alcohol in Ohio, the refusal of men to accept active participation by women in many aspects of the temperance movement, large-scale immigration to the area, increasing consumption of beer, and the proliferation of drinking establishments all contributed to growing frustration among Hillsboro's middle- and upper-class women.

The leader of Ohio's early temperance movement, Samuel Cary, was among the first to popularize prohibition. In 1847, he published a pamphlet, *Cary's Appeal to the People of Ohio*, staking out the then-growing belief that "moral appliances alone cannot arrest the traffic" in alcohol.<sup>20</sup> In part because of Cary's influence in the state, Ohio's 1852 constitution barred the granting of licenses to sell alcoholic beverages by localities, leaving it to the General Assembly to "provide against the evils resulting" from the sale of liquor.<sup>21</sup> The burgeoning prohibition movement in the state, like those in many other areas of the country, was given an added boost by the adoption of the nation's first prohibition law in Maine in 1851.<sup>22</sup> Large petition drives surfaced in Ohio as part of a campaign to have prohibition written into the new state constitution then being drafted. When that effort failed, campaigns to elect legislators willing to follow Maine's example emerged.<sup>23</sup>

Growth of the prohibition movement was particularly important for women. They participated in circumscribed ways in church- or social-service-based temperance activity through the middle of the nineteenth century. But their inability to vote and the social stigma attached to their participation in political agitation led to a reduction in their role in the main national temperance organizations when these organizations' strategies shifted from working through churches and social groups to seeking legal prohibition. Some women, including many in Ohio, remained comfortable using traditional

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18. J. CINCINNATI COMMERCIAL, *supra* note 16.

19. DANNENBAUM, *supra* note 5, at 203, wrote that Lewis popularized the use of prayer, discovering that some saloon keepers would pour out their own liquor when confronted with women kneeling at the bar.

20. *Id.* at 86. The growing mid-century conviction that moral suasion was not adequate to suppress intemperance is well documented in SCOTT C. MARTIN, *DEVIL OF THE DOMESTIC SPHERE: TEMPERANCE, GENDER AND MIDDLE-CLASS IDEOLOGY, 1800-1860*, at 124-149 (2008).

21. *Id.* at 97.

22. An Act for the Suppression of Drinking Houses and Tippling Shops, 1851 Me. Acts 210-218.

23. The best and most detailed summary of the history of temperance and prohibition in Ohio during the decades prior to the crusades is DANNENBAUM, *supra* note 5.

methods of social pressure and continued their work outside the growing prohibition movement.

But more activist temperance and suffrage women found themselves cast aside from major prohibition organizations. Conflict raged into the open in 1852 at a meeting of the New York Sons of Temperance in Albany. State chapters of the Daughters of Temperance were invited to send delegates. When Susan B. Anthony, a delegate from Rochester, sought the podium, she was told that "the sisters were not invited there to speak but to listen and learn."<sup>24</sup> Antoinette Brown, the first female minister of a church in the United States,<sup>25</sup> was hissed at and booed when she tried to speak. The New York State Temperance Society meeting later that year was disrupted by a similar controversy. A stinging debate took place over the seating of female delegates. The women present, including Susan B. Anthony and Amelia Bloomer, were excluded by only a two-vote margin. The inability of Anthony to speak at the 1852 meetings in New York was symptomatic of the controversy generated by and among women participating in public calls for legislative and political action,<sup>26</sup> speaking before "promiscuous" audiences,<sup>27</sup> or otherwise taking on male roles. The first meeting of prohibition-minded women in Ohio occurred in Columbus in 1853, just after the temperance disputes in New York flared into the open.<sup>28</sup>

The intensity of prohibition activity continued to grow during the years before the Civil War and quickly re-emerged when the fighting stopped. Immigration patterns, increasing consumption of beer, and growth in saloon culture clearly helped fuel the fire. The scale of German immigration before and after the war was enormous. Just over 500,000 immigrants arrived in the United States from Germany between 1852 and 1854, constituting forty-three percent of all those who found their way to these shores in that short span.<sup>29</sup> For

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24. *Id.* at 188.

25. She began serving the Congregational church in South Butler, New York, in 1853 and was the first woman ordained as a minister. MARY KELLEY, *LEARNING TO STAND & SPEAK: WOMEN, EDUCATION, AND PUBLIC LIFE IN AMERICA'S REPUBLIC* 132 (2006); ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* 81 (1959).

26. As a result of the New York dispute, a group of women formed their own temperance association. Disputes among these women then arose when Stanton and Anthony argued that men should be admitted to meetings and treated the same as women. Amelia Bloomer, perhaps the most influential woman at the session, insisted that the new organization remain for women only. Stanton and Anthony then refused to serve as president and vice-president of the group, withdrew, and never joined another temperance organization. This account of the dispute is described in CAROL MATTINGLY, *WELL-TEMPERED WOMEN: NINETEENTH-CENTURY TEMPERANCE RHETORIC* 24 (1998). As she notes, some claim that Stanton was actually elected president and withdrew, while others argue that she was defeated in her leadership bid. In any case, the rupture between the radical suffragists and temperance movements became permanent.

27. This quaint description was used in the nineteenth century to describe audiences containing both men and women.

28. DANNENBAUM, *supra* note 5, at 188-89.

29. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, *HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970*, at 106 (1975) [hereinafter *HISTORICAL STATISTICS*]. The Irish were



the twenty years following the Civil War, Germans also were the largest national immigrant group. Many moved to the Midwest, and alcohol consumption patterns changed dramatically with their arrival. Beer, previously a minor beverage in America, began to be sold in large amounts after 1840 as more and more Germans arrived. Sales grew dramatically after the Civil War.<sup>30</sup>

The large growth in beer sales and the opening of large numbers of saloons, especially in places like southern Ohio where many German immigrants lived, exacerbated the fears of women that alcohol was affecting their home environments. The issue was not so much that more alcohol was being consumed, though more beer certainly was, or that only immigrants or blacks were doing the consuming. Rich and poor alike were drinking.<sup>31</sup> The problem was a sense that the practice was decentralizing and disrupting normal methods of social control. It was easy to keep hard liquor on hand at home. No special storage methods were required. If necessary to control male drinkers, women could put the bottles under lock and key. But beer required special storage and dispensing facilities not typically available in households. The bottling industry we are now familiar with did not emerge fully until after Prohibition ended in the 1930s.<sup>32</sup> Men drinking outside the home became much more common. The beer distribution pattern also enlarged the number of places for consumption of hard liquor and broadened the opportunities for “elite” men of Hillsboro to rub elbows with “other” town residents—to say nothing of women of less than stellar reputation. Saloons, as many drinking establishments came to be known in the 1850s, proliferated and emerged as distinctly male

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not far behind the Germans. A bit fewer than 425,000 arrived here between 1852 and 1854, in addition to the deluge of about 765,000 that made the trip in the prior five years. *Id.* I concentrate here on the movement of Germans since they settled in large numbers in the Midwest, including Ohio. According to the Census Bureau, the total population of the United States in 1850 was 23,191,876. THE SEVENTH CENSUS OF THE UNITED STATES: 1850, at ix (1853), available at <http://www2.census.gov/prod2/decennial/documents/1850a-01.pdf>. German immigration, therefore, added about two percent to the population in just three years.

30. The data pattern displayed in publications from the late nineteenth century through today is consistent on this point. See HENRY WILLIAM BLAIR, THE TEMPERANCE MOVEMENT: OR, THE CONFLICT BETWEEN MAN AND ALCOHOL 214 (1888); DEP'T OF HEALTH, EDUC. & WELFARE, FIRST SPEC. REP. TO THE U.S. CONG. ON ALCOHOL & HEALTH (1971); Harry G. Levine & Craig Reinerman, From Prohibition to Regulation: Lessons From Alcohol Policy for Drug Policy, <http://www.drugtext.org/library/articles/craig102.htm> (last visited Aug. 15, 2008). The same conclusions are reached in histories of beer. According to MAUREEN OGLE, AMBITIOUS BREW: THE STORY OF AMERICAN BEER 151 (2006), beer consumption soared from about one gallon per capita in 1840 to fifteen by 1896. See also AMY MITTELMAN, BREWING BATTLES: A HISTORY OF AMERICAN BEER 22, 38 (2008). Fermented malt liquor production grew after the Civil War. Data gathered by the Census Bureau confirm the pattern. HISTORICAL STATISTICS, *supra* note 29, at 691.

31. This point is made convincingly in BLOCKER, *supra* note 5, at 97-113. Blocker's comprehensive study of alcohol consumption patterns and the cultural and demographic characteristics of those participating in the crusades make it clear that the native-born, for example, were neither more nor less likely to drink than immigrants.

32. Fifteen percent of beer was bottled in 1915. By 1937, the figure reached thirty-eight percent. Canned beer emerged in 1935. MITTELMAN, *supra* note 30, at 119.

domains.<sup>33</sup> Stories of men drinking in town, coming home drunk, wasting money, and beating up their families, while always present in cultural lore,<sup>34</sup> became much more common and credible. Widespread belief in the veracity of such tales of woe, combined with concerns generated by economic panics, the presence of immigrants, urban growth, and industrialization, increased the power of social movements based on fear and anxiety about family welfare.<sup>35</sup>

The final straw for the women of Hillsboro may well have been anger and frustration. Sale of liquor by the drink had been barred in Ohio since at least 1854,<sup>36</sup> the same year that families obtained the authority to sue liquor dispensers for damages caused by their drunken relatives.<sup>37</sup> But owners of saloons, drug stores, beer gardens, and other establishments selling alcohol routinely claimed that their payment of federal taxes and receipt of a federal tax stamp legitimated their trade. Ohio's law, and similar laws in other jurisdictions, went largely unenforced by public authorities. Ballot initiatives in some towns made them legally "dry," but saloons continued to do business.<sup>38</sup> The failure of elected officials to take actions against those distributing alcohol led to substantial anger and frustration.

Some spectacular events began to occur. During the 1850s, women in dozens of scattered communities formed bands to invade saloons and destroy their stocks of alcohol.<sup>39</sup> They often obtained the tacit, and sometimes the public, support and blessing of local religious leaders and male temperance societies. The war interrupted such actions. But the return of men habituated to drinking during military service to their pre-war communities, the use of

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33. THOMAS R. PEGRAM, *BATTLING DEMON RUM: THE STRUGGLE FOR A DRY AMERICA, 1800-1933*, at 53-56 (1998).

34. The history of this lore is well told in MARTIN, *supra* note 20, at 46-53.

35. It was not a mere coincidence that the Comstock Movement emerged in the East at the exact same time as the temperance crusades in Ohio. Adoption of the Comstock Act, 17 Stat. 598, by Congress in 1873 made illegal the dissemination of information about and the distribution of devices for abortion and birth control. The Comstock movement also spent quite a bit of energy suppressing sexually-oriented materials and controlling various forms of disfavored street activity. It was part of a large effort to protect the children of middle- and upper-class city dwellers from the perceived negative influences of urban life—slums, immigrants, cacophony, and temptation. See NICOLA BEISEL, *IMPERILED INNOCENTS: ANTHONY COMSTOCK AND FAMILY REPRODUCTION IN VICTORIAN AMERICA* (1997).

36. Section 1 of An Act to Provide Against the Evils Resulting From the Sale of Intoxicating Liquors in the State of Ohio, 1854 Ohio Laws 153, provided: "That it shall be unlawful for any person or persons, by agent or otherwise, to sell, in any quantity, intoxicating liquors, to be drank in, upon, or about the building, or premises where sold, or to sell such intoxicating liquors, to be drank in any adjoining room building or premises, or other place of public resort connected with said building." In essence, this provision required that all alcohol be sold in containers and taken to another, distinct location.

37. James F. Mosher, *Dram Shop Liability and the Prevention of Alcohol-Related Problems*, 40 J. STUD. ON ALCOHOL 773 (1979).

38. See BLOCKER, *supra* note 5, at 172.

39. DANNENBAUM, *supra* note 5, at 204-05.

alcohol or beer as partial payment of wages in many factories,<sup>40</sup> the post-war onset of large-scale beer production, and the opening of many new saloons exacerbated the situation. Women who led wartime temperance activities sometimes were pushed aside as hostilities ended, adding to the level of discontent.<sup>41</sup> When the major, male-dominated political parties showed little interest in temperance during the 1872 election and Ohio prepared for a constitutional convention in 1873, the moment was ripe for an activist women's prohibition movement to surface. All that was needed was a catalyst. Dr. Diocletian Lewis filled the bill.

## II. WOMEN IN MEN'S DOMAINS

### A. *Setting the Tone*

After the women of Hillsboro began to pray, sing, march, and demonstrate, the impact they had on men became obvious. Bars shut down, men converted to the temperance cause, and, eventually, legal proceedings began. Typical nineteenth century courtrooms, like the saloons that peppered the south Ohio landscape, were not women's territory. After the Civil War women appeared as trial witnesses or attended public court sessions from time to time and joined the legal profession in very small numbers.<sup>42</sup> But the vast majority of those present in courthouses across the nation—judges, jurors, court personnel, attorneys, and spectators—were men. Even trials deeply affecting women's interests typically occurred in male domains.<sup>43</sup> There were, however, exceptions. And at least two of them played an important role in Hillsboro, Ohio's emergence as the epicenter—both legal and non-legal—of the crusades.

Some years before the Hillsboro crusades, a crusade began in the nearby town of Greenfield<sup>44</sup> when a group of women in that town organized to shut down the liquor trade. During a march in 1865, a woman whose son had been

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40. Beer rations were part of the daily fare for Union soldiers. Factory workers sometimes carried beer tins to work. JULIE HUSBAND & JIM O'LOUGHLIN, *DAILY LIFE IN THE INDUSTRIAL UNITED STATES, 1870-1900*, at 159-60 (2004).

41. DANNENBAUM, *supra* note 5, at 188-91.

42. The infamous case of *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1873), affirming Illinois's refusal to admit Myra Bradwell to the state bar, was not the final word on the subject. Six other women applied for membership in various state bars the same year as Bradwell. A few of them were admitted, setting the stage for the gradual erosion of gender segregation in the profession. Other women joined the bar in the years after the decision in *Bradwell*, and women's law schools began to open. Bradwell herself later was admitted to both the Illinois and United States Supreme Court bars. See generally VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998).

43. Trials of abortionists, for example, were before male audiences, save perhaps for the women called as witnesses. See, for example, the widely distributed volume published by National Police Gazette reporting the 1846 trial of Madame Restell in New York, WONDERFUL TRIAL OF CAROLINE LOHMAN, ALIAS RESTELL, WITH SPEECHES OF COUNSEL, CHARGE OF COURT AND VERDICT OF JURY (1847), documenting that the only women present in the courtroom were Restell and her client Maria Bodine.

44. Greenfield is about seventeen miles northeast of Hillsboro.

killed during a gun-toting saloon brawl became particularly incensed in front of the establishment where the fight occurred. Her cries incited the women to use axes and other implements to destroy the saloon, as well as other taverns in town. Bar owners sued the women, and a trial commenced in Hillsboro early in 1867. There, "[t]he 'first ladies' of Hillsboro met the defendants when they arrived in town . . . 'and escorted them to private homes, for generous entertainment during their stay . . . [and] also took seats with them during the trial, and in every possible way gave demonstration of the morality of the case.'"<sup>45</sup> After a four-day trial, Judge Albert S. Dickey ordered the women to pay \$625 in damages.<sup>46</sup> But the proceeding was a precedent for women mobilizing to publicly support the most radical prohibition activities. Perhaps it was not an accident that the women of Greenfield, where the bar smashing that generated this trial occurred, were among the first to join the crusade after it began in Hillsboro.

A second court proceeding was more remarkable. Suffragist Miriam Cole, in a letter she wrote puzzling over the public displays of temperance sentiment by women in Ohio,<sup>47</sup> recalled a trial in Springfield, Ohio,<sup>48</sup> that occurred just shy of a year before the crusades erupted. It was a case brought under a dram shop act<sup>49</sup> commonly known in Ohio as the Adair Law, an old statute amended as temperance activity intensified in 1870 to allow any person to sue bar owners and sellers of liquor to recover damages caused by an intoxicated buyer.<sup>50</sup> "A woman whose husband had reduced his family to utter want by drunkenness, entered a suit against the rumseller," Cole recalled. After an appeal from the plaintiff to the women of Springfield for help appeared in the

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45. DANNENBAUM, *supra* note 5, at 204 (quoting the WESTERN CHRISTIAN ADVOCATE, Jan. 30, 1867).

46. GREENFIELD HISTORICAL SOCIETY, GREENFIELD, OHIO, 1799-1999, at 9 (2000).

47. The letter was published in 3 HISTORY OF WOMAN SUFFRAGE 501 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joselyn Gage eds., 1889). Most well known pre-Civil War suffragists also were members of temperance groups. Proposals to control the use of alcohol appealed to a wide cross-section of the political spectrum. But the crusades brought varying reactions from suffragists—both fascination and repulsion. The presence of women in the streets making demands on male culture created a certain excitement, but many suffragists viewed the use of moral suasion and bar invasions as hopeless, even indecorous, gestures without access to the ballot. For some, like Cole, there was simply puzzlement. Jack S. Blocker, Jr., in *Separate Paths: Suffragists and the Women's Temperance Crusade*, 10 SIGNS 460, 469 (1985), provides a very nice review of the responses of the suffragists to the crusades.

48. Springfield is a bit over sixty miles north of Hillsboro.

49. Dram shop acts began to appear in the middle of the nineteenth century. Surprisingly, no history of these acts seems to exist. There is some consensus that Wisconsin was the first to enact one in 1850. Wis. Stat. §139 (1850); *Liquor Provider Liability*, 43 Am. Jur. Trials 527; Daphne D. Sipes, *The Emergence of Civil Liability for Dispensing Alcohol: A Comparative Study*, 8 REV. LITIG. 1, 3 (1988). Maine adopted a broader prohibition act around the same time, and a scattering of other states, including Ohio, passed dram shop acts before the Civil War.

50. A cause of action like this existed in Ohio at least since 1854. See Mosher, *supra* note 37. But in 1870, it was toughened to explicitly allow suit to be brought against building owners and tenants in addition to those actually selling the alcohol. An Act to Amend Sections Seven and Ten of an Act Entitled "An Act to Provide Against the Evils Resulting from the Sale of Intoxicating Liquors in the State of Ohio," 1870 Ohio Laws 101-03.

local paper, "a large delegation of the most respectable and pious women of the city came into the court." After a week-long adjournment, "the excitement had become so great that when the trial came on the court-room was full of spectators, and the number of ladies within the rail was increased three-fold." And most surprising of all to Cole:

Mrs. E. D. Stewart made the plea to the jury. A verdict was rendered against the rumseller. . . . [T]he citizens of Springfield will never forget the influence which the presence of women, in sympathy with another wronged woman, had upon the court. And what added power those women would have had as judges, jurors and advocates; citizens crowned with all the rights, privileges and immunities justly theirs by law and constitution.<sup>51</sup>

Mrs. E. D. Stewart was not a lawyer but a well-known Ohio temperance advocate. Popularly known as "Mother Stewart," she made something of a career showing up as an advocate in Adair Law cases and was a principal player and frequent speaker during the Hillsboro crusades.<sup>52</sup> Stewart later wrote about her activities.<sup>53</sup> After giving a talk in Springfield, Ohio, on "The Liquor Traffic, How to Fight It," she recalled being encouraged by C. M. Nichols, editor of the *Springfield Republic*, to urge women abused by their husbands to sue under the Adair Law. A short time later, Nichols told Stewart that just such a trial was occurring and encouraged her to bring a group of women to watch the proceedings: "I had my misgivings about getting the ladies," Stewart wrote, "but did not say so. I knew better than a gentleman could, what the effect upon woman's mind had been of the all-time teaching that they must not seem to know anything about the saloon or men's drinking, it was not lady-like."<sup>54</sup> Her skepticism, at least initially, was well founded. With one exception, women she asked to attend begged off. Stewart, however, attended and noticed that the judge, "who was a Christian man, was gratified at my presence, as was also the prosecuting attorney,<sup>55</sup> my young friend, G. C. Rawlins, and of course the

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51. Cole's narrative is found in Stanton et al., *supra* note 47, at 501.

52. Eliza D. Stewart was born on April 25, 1816, in Piketown, Ohio, became a teacher, and married Hiram Stewart in 1848. She first gained modest fame for her activity in sanitary and relief work during the Civil War. Union soldiers began to call her "Mother Stewart," a moniker that stuck for the rest of her life. She founded the Temperance League of Osborn, Ohio, in 1873 and the Ohio Temperance League at Springfield, Ohio, in 1874. The Osborn group became the first Ohio chapter of the Woman's Christian Temperance Union. In the mid-1870s she traveled to England and organized the first W.C.T.U. there. She died on August 6, 1908. A biography does not exist. *But see* Eliza D. Stewart, Ohio History Central, <http://www.ohiohistorycentral.org/entry.php?rec=358> (last visited Aug. 22, 2008); "Mother" Eliza D. Stewart Dead, N. Y. TIMES, Aug. 8, 1908, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9C06E3DA113EE033A2575BC0A96E9C946997D6CF>; WHO'S WHO IN AMERICA 1899-1900, at 694 (1900).

53. MOTHER STEWART, MEMORIES OF THE CRUSADE: A THRILLING ACCOUNT OF THE GREAT UPRISING OF THE WOMEN OF OHIO IN 1873, AGAINST THE LIQUOR CRIME (3rd ed. 1890).

54. *Id.* at 32.

55. Despite the use of language we normally apply to attorneys representing governments in criminal cases, Stewart was referring to the plaintiff's lawyer.

defense was not."<sup>56</sup> This version of events differs somewhat from Cole's narrative about women filling the courtroom. Perhaps Stewart's unsuccessful efforts to personally recruit women led to the public requests for help recalled by Cole. Or perhaps the bold request by Rawlins that Stewart make the closing argument—recognizing the power an articulate woman might exercise over a male jury—led to an outpouring of support. We may never know the full story. In any case, Stewart, taking advantage of the right of any person to appear as an advocate in the court hearing the case, made the closing statement.

Though surely we must take Mother Stewart's effusive description of her role in the case with a grain of salt, it is still a revealing portrayal of the way gender roles could be used to influence male behavior in late nineteenth century America. She began the central argument of her speech by noting that the plaintiff's husband, "when not under the influence of liquor, was a kind husband and father." He provided "for the necessities of his family . . . [and] even when occasionally giving way to his appetite it had been proven that he was able to earn from \$6 to \$9 per week." "But . . . the influence of drink," Stewart argued, made him "so worthless and incompetent that the wife and mother, besides her regular domestic duties, was obliged to labor to earn the means of support for her family." Powerful rhetoric followed. "[W]ho will stand by her? Who will befriend her? Who will defend her? And you see the array against her. I simply waved my hand towards that motley mass without looking towards them, but saw that the jury did." Noting the power of such a gesture, Stewart played on it some more. "I proceeded to say, this woman, who I hoped would pardon me, was branded as the drunkard's wife, and must wear the brand forever. And you noticed that as on the witness stand, being strung up to the utmost tension, she detailed her sufferings and wrongs,—a sight to touch and melt the stoutest heart to pity—that crowd," referring to the audience in the courtroom, "stood there leering and jeering in satanic mirth at her misery." She then asked about the reactions of "that crowd," presumably with another appropriate gesture, to the plight of the plaintiff's children. "And these little boys, as . . . [the crowds] had noticed, precocious and intelligent beyond their years, were branded, and would carry the brand to the grave,—*The Drunkard's Child*." Finally, Stewart closed the rhetorical vice, asking the jury to "deal with this woman as they would that others should deal with their wife or daughter. And as they dealt with her, might God deal with them." Stewart closed her narrative with a most effusive summary of her impact. "I had not spoken five minutes," she claimed, and "did not know the extent of the mischief I had done the dealer in woe till his attorney arose to defend him. If he had prepared any defense for his client, he certainly had forgotten it. He gesticulated vehemently, declared it was 'infamous to bring a female in to influence the court and jury.' He should think Mrs. Stewart would be ashamed to thus come into court. She

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56. STEWART, *supra* note 53, at 32.

had much better have been at home attending to her legitimate duties." The jury, she reported, "brought in a verdict of \$100 and costs."<sup>57</sup>

Stewart, of course, knew how to pluck the heartstrings of the male jurors. Recognizing their role as protectors of wives, daughters, children, and grandchildren, she dared them to turn aside from their God-given obligation to provide for their families and kin. Even as she crossed traditional gender boundary lines to enter and then control the atmospherics of a courtroom, she asked the men before her to make sure they met their own social obligations. When reading her story, one can visualize the discomfort she caused men unaccustomed to hearing articulate women speak in a courtroom. The defense lawyer, she claimed, forgot the defense he prepared, and the audience and jury each responded to her gestures of support for the poor family impoverished by a drinking husband and father. The male jurors, Mother Stewart asserted, could not resist her appeal for help. Stewart took her judicial experience with her to Hillsboro the following year and used it to school her peers there on the importance of insuring women's presence in generally male bastions—courtrooms as well as saloons.<sup>58</sup>

### *B. Events Giving Rise to Litigation in Hillsboro*

Legal events took on major importance in Hillsboro very shortly after the temperance crusades began. The town buzzed with chatter about the operations of a grand jury investigating illegal sales of alcohol and the possibility that citizens might be called to testify.<sup>59</sup> Dr. William Henry Harrison Dunn's Palace Drug Store continued to be the site of daily demonstrations. Nonetheless, residents reacted with surprise and some consternation to the posting of a notice threatening legal action if the demonstrations in front of the store continued. Though any town caught up in a burgeoning movement of moral fervor might be on edge about legal proceedings, some women in Hillsboro were particularly uneasy. While bar sit-ins certainly involved encroachments upon male domains, use of the law upped the ante to a new level. Legal proceedings—like politics, public oratory, and large business enterprises—involved not only male spaces but also activities that traditional women eschewed. Moral suasion was one thing; active use of the levers of government power was quite another.

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57. See *id.* for Stewart's full description of her role in the case.

58. In addition to the case Mother Stewart argued, other Adair Law suits were brought before the temperance crusades broke out. BLOCKER, *supra* note 5, at 132-133, discusses seven cases brought in Washington Court House between 1871 and 1873 with mixed results for the plaintiffs. The paucity of cases, the length of the litigation, and the mixed results of these trials were not very satisfying for temperance advocates.

59. The public mood, we are told, turned sour when reports of a grand jury investigation emerged. "[N]o man wants to be called before a grand jury and told where he got his liquor." The news report went on to note the crusaders' opposition to use of the legal system. Beadle, *Woman's Whiskey War: The Hillsboro Battle*, CINCINNATI COMMERCIAL, Feb. 2, 1874.

J. H. Beadle reported on a speech that Judge Matthews<sup>60</sup> delivered to a gathering of crusaders at the Methodist Church in Hillsboro the night of January 29, 1874, and he noted the disapproving audience reaction to the judge's comments on the use of law to further the crusaders' goals. Matthews' remarks, Beadle reported, "were received with great favor, till he reached this passage: 'We all hold . . . [moral suasion] to be the best method. But we are trusting in God, and we must not dictate methods to Him. We had not intended to appeal to the law, but God works by means, and it may be that He has determined we shall make use of the law of Ohio!'" At this ingenious attempt to smooth the way to legal proceedings there was quite a titter among the irreverent, and the ladies near me showed decided signs of disapprobation." Matthews then called upon Biblical images to calm the crowd. "[T]he Judge," Beadle reported, "went on to recite the story of David, who at one time was forbidden to attack the Philistines until he saw a moving in the tops of the mulberry trees; then the command was, 'Bestir thyself.' The Judge thought the moving in the mulberry trees was now plain in Hillsboro, which simile, a critic informed me, had reference to the grand jury, now in session." By that point, Beadle noted, "Of the nine saloons (including three hotel bars) five have closed; whether permanently, and whether because of the ladies or the grand jury, is not known. The ladies are earnest in their repudiation of legal measures, and do not fail to protest whenever the matter is broached in their meetings."<sup>61</sup>

Whether such protests arose from the reluctance of traditional women to leave the path of moral suasion, conviction that God would provide a pathway to success, a desire to avoid the male judicial domain, or frustration at the failure of politicians and prosecutors to pursue illegal drinking establishments turned out to make little difference in Hillsboro. On the morning of January 29, 1874, residents awoke to find a "Notice to the Ladies of Hillsboro" from Dunn posted all over town. He called upon Mother Stewart and seventy-eight other women, as well as twenty-five men "who, although not directly participating in your daily proceedings, are nevertheless, counseling and advising you in your unlawful proceedings by subscriptions of money, and encouragement in the commission of daily trespasses upon my property" to cease the demonstrations in front of his store. Dunn complained that his "legitimate business has been obstructed, my feelings outraged, and my profession and occupation sought to be rendered odious, by reason of which I have suffered great pecuniary damage and injury." "Cherishing no unkind hostility toward any one," Dunn wrote, "but

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60. None of the reports involving Matthews gave his first name. But they probably refer to Judge John Matthews, who was born in 1812 in Hillsboro and moved to Clinton County, the next county east, in his twenties. In 1866 he was elected Probate Judge of Clinton County. The History of Clinton County Ohio, <http://www.heritagepursuit.com/Clinton/ClintonIndex.htm> (last visited Sep. 5, 2008).

61. This description of the speech is found in Beadle, CINCINNATI COMMERCIAL, *supra* note 59. Not all crusaders were opposed to using either law or political action to further their goals, but the vast bulk of organizations resisted such steps. See Blocker, *supra* note 5, at 181 (claiming that fewer than ten percent of the towns with crusades witnessed legal or political activity).



entertaining the highest regard for the ladies of Hillsboro, distinguished heretofore, as they have been, for their courtesy, refinement and Christian virtues, I feel extremely reluctant to have to appeal to the law for protection against their riotous and unlawful acts." But, he concluded, "if such action and trespasses are repeated, I shall apply to the laws of the State for redress and damages for the injuries occasioned by reason of the practices of which I complain."<sup>62</sup>

The notice exposed two important sensibilities of those opposing the crusades. First, Dunn declared that the men he named were "not directly participating" in the daily demonstrations but counseling, advising, providing financial support, and encouraging "daily trespasses." As the controversy continued, some men expanded on this idea by claiming that the crusaders lacked the organizational wherewithal to carry on their efforts and that men had to be running the show behind the scenes. This sentiment was expressed most forcibly by Judge William H. Safford, who presided over the first part of the lawsuit brought by Dunn shortly after Dunn posted his notice. Second, Dunn spoke about the women crusaders with some care. "Cherishing no unkind hostility" towards his female neighbors and pointing to their "courtesy, refinement and Christian virtues," Dunn made a symbolic, but important, bow to those parading to his store each day. It was one of many instances in which men felt constrained and limited in their ability to lash out at the polite, well-dressed, hymn-singing, women crusaders.

Dunn sought legal redress and obtained temporary injunctive relief on January 31, 1874, a result that, according to Beadle, initially split the movement. "All the while the ladies had been praying and pleading[,] a few of the men had kept hinting at the law; but the ladies dissuaded earnestly from such action. But the law was set in motion, and now at least one-third of the people are in opposition to the movement."<sup>63</sup> But Dunn's actions "had the effect to bring out a large number to the morning meeting"<sup>64</sup> of the crusaders who voted unanimously to continue their work. A delegation was sent to the Mayor and construction began on a "Tabernacle" in the street in front of Dunn's store. The move to court, it seems, convinced most of the demonstrating women that they had to confront the new environment with political action as well as prayer and devotion.

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62. The contents of Dunn's notice are found in an article by "Beadle," *Correspondence*, CINCINNATI COMMERCIAL, Jan. 31, 1874.

63. *Id.*

64. *Id.*

*C. Judge William H. Safford*

The Hillsboro temporary injunction was issued by Judge William H. Safford.<sup>65</sup> After promulgating the order barring the crusaders from demonstrating in front of Dunn's business, Safford declined to seek another term as judge. In a stunning turnabout, he then became Dunn's attorney and handled the case for him during a hearing on whether to make the temporary injunction permanent. Less than two weeks after the initial court hearing, an enlightening interview of him by "Amber" was published in the *Cincinnati Commercial*.<sup>66</sup> Safford took the position that Dunn ran "the most completely arranged and beautiful drug store in Hillsboro," that he did not sell liquor on the premises or to drunkards or minors, that his business was lawful, and that an injunction against the women therefore was appropriate. When Amber asked what he thought of the crusader women, Safford responded that the women were the finest of citizens but were not really in control of their actions. "I am personally acquainted with some of these ladies, and have accepted of their hospitality," Safford began. "[F]or intelligence and refinement, and all the female graces and Christian virtues they are not excelled in this or any other State." "Many of these were born in affluence and of distinguished and cultivated families," he continued. "[T]hey have appreciated and patronized learning and the arts; they have had the advantages of two, and part of the time three of the best female colleges in the State, conducted by the most successful and experienced teachers in the West. These institutions have been attended by the daughters of families of wealth and refinement from all quarters of the State, as well as from Kentucky and other States. This mingling and intermingling in their society have melted, as it were, into a homogeneity that is nowhere excelled. This much I think is due for me to say of the ladies, generally, of Hillsboro."

But after making this polite bow to the elite women in town, Safford refused to give them much credit for the power of their demonstrations. "When the Yankee peddler of patent temperance societies [Dr. Diocletian Lewis] explained their virtues, the plan of moral suasion pleased their views and gave promise of success," he opined. "[N]either moral nor legal coercion was

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65. Safford was born in Virginia and moved to Chillicothe, Ohio, in 1848, where he opened a law practice. After the Civil War, he was elected judge of the Court of Common Pleas for the Fifth Judicial District of Ohio, a seat he occupied until 1874, when he declined renomination. He then resumed practicing law. A brief biography may be found at Ross County, Ohio, Biographies, [http://ohiogenealogyexpress.com/ross/bios/rossco\\_bios\\_s.html](http://ohiogenealogyexpress.com/ross/bios/rossco_bios_s.html) (last visited Sept. 5, 2008).

66. Amber almost surely was a woman. Early on in the interview, after Judge Safford said he would speak about any matter provided that Amber promised "to tell the truth, that you will not pervert, but will faithfully note my expressions," the author responded, "I'm as young and innocent as I am physically lovely and 'cannot tell a lie.'" Amber, *Woman's Whiskey War: Judge Safford Interviewed; He Rises to Explain*, CINCINNATI COMMERCIAL, Feb. 16, 1874. The overall tenor of the article strongly suggests that Amber was not a crusader, a surmise made more likely by Safford's willingness to be interviewed in the first place.

dreamed of in the commencement. It was intended to use mild and persuasive measures to induce the cessation of the liquor traffic," Safford continued. But, he complained, "[h]aving started in the enterprise, what with the aid of ministers and the encouragement of the male portion of the community, their zeal in the case increased. In the meetings at night they were stimulated by the flattering encouragement they received, and before they were aware of it had raised a whirlwind which they could not control." The women, in Safford's view, became the pawns of men. "They then became somewhat coercive and aggressive. They did not stop to make distinctions. Any one who sold liquors had to come down. If persuasion could not accomplish it, he was to be goaded and hectoring into it," the judge bemoaned. "Dunn promised them that he would sell no whisky contrary to law; neither would he sell to any of their brothers, fathers, or sons, if they requested him not to," he said. "But that was not satisfactory" to the women, Safford lamented. "The spirit of conquest was aroused; and they fired prayers at his front door like hail. They gradually and unintentionally got into excesses." He concluded by arguing that the women lacked any control over their actions. "I think that when matters had arrived at this point, the leaders of the movement would have gladly backed out, had it not been feared, if they did so the whole thing would have fallen through. They, however, were in the whirl, and had to go with it. I can not believe that the leaders or, I should say, prominent ladies, ever intended that matters should go so far."<sup>67</sup>

Safford's statement presents a fascinating mix of politeness and disbelief. How could the refined, intelligent, well-educated, elegant, Christian ladies of Hillsboro possibly have unleashed such a storm of protest? "[B]efore they were aware of it," Safford contended, the women "had raised a whirlwind which they could not control." Despite the obviously well-organized way in which daily demonstrations occurred, with prayer meetings followed by groups of women marching in an orderly fashion to bars, saloons, and drugstores, he found it difficult to believe that the women of Hillsboro actually desired to undertake such activity, intended to pressure their fellow citizens to join the crusades, planned their course of action, and rejoiced at the power of their prayers.

The depth of Judge Safford's state of disbelief was demonstrated even more strongly a month later—after the judges who took over the Dunn case declined to make permanent his temporary injunction order—when he gave a speech in Chillicothe.<sup>68</sup> He condemned the crusaders in very strong language—

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67. See *id.* for Amber's interview with Judge Safford.

68. *Judge Safford's Speech at Chillicothe*, CINCINNATI COMMERCIAL, Mar. 16, 1874. This unsigned article is presented as a transcript of the speech, delivered on March 14, 1874. But there were a number of comments later published in the paper indicating that this written version differed markedly from the much more extemporaneous remarks actually delivered in the almost two hour oration. "Beadle" commented that the printed version left "out all the side issues, personal allusion, garbled Scripture, and demagoguery." *Correspondence*, CINCINNATI COMMERCIAL, *supra* note 14. In an anonymous letter published the day before, the correspondent claimed that Safford was drunk when he

as a "female commune" trespassing on legal rights, morally coercing citizens, and infringing on freedom of opinion.<sup>69</sup> "Honest women," he exclaimed, "are put forward by dishonest men who are cowards themselves. I will not say anything disrespectful of the mothers, wives, sisters and daughters engaged in this crusade. They have, a great many of them, God knows, reason for making every effort to suppress the whisky trade and we can say to them that we will lend you every aid to suppress it in a legal way." But, he went on, "There is a boundary beyond which we can not go with propriety. I am unwilling that these misguided women should place themselves in the purlieus [environs] of vice and immorality, and that [sic] should visit these saloons to be remarked upon by the rabble. I am unwilling they shall get upon the streets in the ridiculous attitude of prayer, to coerce men into a compliance with their demands, and not really to supplicate the throne of the Deity."<sup>70</sup>

Judge Safford's position that the women were "put forward by dishonest men who are cowards themselves" was a conspicuous misstatement of the crusade's reality. Such denial that women were responsible for their own actions coursed through the public statements of those opposed to the demonstrations. The men making such statements could not fathom that women would voluntarily "place themselves in the purlieus of vice and immorality" and "be remarked upon by the rabble" supposedly inhabiting such places. Nor were they willing to accept women using "the ridiculous attitude of prayer" to coerce men, rather than soliciting help against the liquor trade from on high. It was not that prayer itself was ridiculous; it was the use of prayer as a way of controlling male spaces that struck Safford as unsupportable.

These comments go to the heart of the public debate that unfolded about the crusades as they occurred. Ironically, the statements mirrored the thoughts of suffragists like Miriam Cole, who also found it hard to understand why genteel, conservative ladies of rural America would place themselves in compromising positions to seek temperance while refusing to do the same to obtain the vote. Cole, who was a co-editor of the *Woman's Advocate* in Dayton, Ohio, was perplexed by the actions of "women who are so pressed with domestic cares that they have no time to vote; . . . who shun notoriety so much that they are unwilling to ask permission to vote; . . . [and] who believe that men are quite capable of managing State and municipal affairs without their interference." Cole was stunned by their actions, writing that "for them to have

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gave the speech, that "no man in his sound sense would belch forth such a harangue," and that his "indecent allusions to the Protestant clergy and to Mother Stewart are the passages which excite most indignation." "I have heard two harangues in my time that stand pre-eminent for blaspheming, abuse and obscenity," the author went on, "one was delivered by Brigham Young in April, 1869, the other by Judge Safford on Saturday night." *Woman's Whisky War*, CINCINNATI COMMERCIAL, Mar. 17, 1874.

69. This is a position that many liberals today might take in a similar setting. The coercive aspects of the crusade are unattractive to modern sensitivities.

70. Judge Safford's speech is found in *Judge Safford's Speech at Chillicothe*, CINCINNATI COMMERCIAL, *supra* note 68.

set on foot the present crusade, how queer!" The traditional feminine virtues called upon by the crusaders, according to Cole, were undermined by their actions. "Their singing," she protested, "though charged with a moral purpose, and their prayers, though directed to a specific end, do not make their warfare a wit more feminine, nor their situation more attractive. A woman knocking out the head of a whiskey barrel with an ax, to the tune of Old Hundred,<sup>71</sup> is not the ideal woman sitting on a sofa, dining on strawberries and cream, and sweetly warbling, 'The Rose that All are Praising.'<sup>72</sup> She is as far from it as Susan B. Anthony was when pushing her ballot into the box."<sup>73</sup>

Both Safford and Cole were surprised that the women of Hillsboro violated social norms they previously had accepted. Their actions offended them both. And that, of course, is just the point. The crusaders took much of American culture by surprise. Their persistence, despite disapproval among significant segments of the body politic, led them to gain a deeper understanding of law and politics. That became very obvious at the Palace Drug Store injunction hearing.

#### *D. The Permanent Injunction Hearing*

The arguments before Judges S. F. Steele and T. M. Gray were on a demurrer filed by the defendants claiming that there was no legal basis for the suit and for the issuance of an injunction. Mother Stewart's difficulties in getting women to attend an Adair Law trial the prior year were clearly overcome in the Dunn case. The men orchestrating the lawsuit and running the court were confronted with a sea of women. "A large and interested crowd, more than half of whom are ladies," it was reported, "were assembled this morning at the Courthouse to hear the case of David Johnson and W. H. H.

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71. The sixteenth century tune referred to got its name because it was associated with Psalm 100 in the Puritan hymnal used in the early seventeenth century. Words for many causes, including abolition and temperance, were put to the tune. Here is one example of a temperance version:

Praise God from whom all blessings flow;  
Praise Him who heals the drunkard's woe;  
Praise Him who leads the temp'rance host;  
Praise Father, Son and Holy Ghost.

PAUL D. SANDERS, LYRICS AND BORROWED TUNES OF THE AMERICAN TEMPERANCE MOVEMENT 72 (2006).

72. The sweetly warbling song Cole wrote of was a well-known hymn. The first verse is:

The rose that all are praising  
Is not the rose for me,  
Its beauty fades as quickly  
As sunshine on the sea;  
But there's a rose in Zion's bow'r,  
The rose of Sharon—Sweetest flow'r,  
Blooms on the immortal tree,  
O that's the rose for me.

See HENRY BACON, SERVICE BOOK; WITH A SELECTION OF TUNES AND HYMNS, FOR SABBATH SCHOOLS (6th ed. 1857).

73. Cole's reaction is found in its entirety in Stanton et al., *supra* note 47, at 502.

Dunn . . . , who . . . brought suit . . . against the defendants, a large proportion of whom are some of the most respectable ladies in Hillsboro, asking that an injunction be granted to prevent them from holding temperance prayer meetings in or near the drug store."<sup>74</sup> Since the women present often were defendants in the action, it was very difficult to criticize their presence. "The court-room today was again packed by a large crowd, the ladies, as usual, being in the majority, and a greater portion of them defendants in the case of Dunn against Scott and others."<sup>75</sup>

Despite the presence of so many women, the attorneys for Dunn—Judge William H. Safford, Mr. Ulrich Sloane, and Mr. Charles H. Collins—made some astonishing critiques of the crusaders' behavior.<sup>76</sup> Sloane's comments were particularly noteworthy. A significant newspaper excerpt best sets the mood:

Singing is a very good thing, but like all other good things, it must be in its place, for Solomon says "there is a time to sing, and there is a time to dance,"<sup>77</sup> and I suppose these ladies would have danced before Dunn's door if they had thought they could have coerced him in that way. (Laughter.) It is a well known fact that ladies have no idea of their legal abilities, and most of them probably do not know the component parts of a promissory note, and I am inclined to keep them from knowing anything about man's province, because when they forget their woman's sphere they lose that respect which should be paid to them. That they are honest in their belief that the sale of liquors is a curse and a wrong, there can be no doubt, and nothing can be more true than the infinite powers of women to carry out measure of moral reform by the powers of moral suasion, and if they had gone on in their own way they would have succeeded, instead of listening to the advice of a Boston quack, and they have committed a trespass in this case which demands the interposition of a Court of equity, and it is the unquestioned duty of the Court to interfere. Mr. Williams<sup>78</sup> has searched the realms of fiction for material for his argument in this case, and has found poor Jerry Cruncher,<sup>79</sup> who could stand the

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74. *The Temperance Injunction Case at Hillsboro*, CINCINNATI COMMERCIAL, Feb. 18, 1874.

75. *The Women's Prayer Meeting Injunction Suit at Hillsboro*, CINCINNATI COMMERCIAL, Feb. 20, 1874.

76. *Id.*

77. This is a paraphrase of part of *Ecclesiastes* 3:4, traditionally attributed to Solomon.

78. Mr. Marshall J. Williams was one of the lawyers for the defendants. Williams, born in 1837, was from Washington Court House. He was Fayette County Prosecuting Attorney in the 1860s and a member of the Ohio House of Representatives during the three years prior to the crusades. He later served as a Circuit Judge and as a Justice and Chief Justice of the Ohio Supreme Court. See *The Political Graveyard*, <http://politicalgraveyard.com/geo/OH/lawyer.W-Z.html> (last visited Sept. 9, 2008).

79. Jeremiah Cruncher is a minor character in Charles Dickens' *A Tale of Two Cities*. Cruncher was a messenger, porter, and sometime grave robber. His wife was given to prayer. In Chapter XIV of Book the Second, Dickens tells us that Cruncher is wont to grumble to his wife, "sullenly holding her in conversation that she might be prevented from meditating any petitions to his disadvantage." His good wife is then subjected to Cruncher's petulance: "With your flying into the face of your own wittles and drink! I don't know how scarce you mayn't make the wittles and drink here, by your flopping tricks and

"flopping" of one woman, how then can he expect that poor Dunn can stand that of one hundred! (Laughter.) Jerry's wife did not "flop" against his business, but those "flopers" do "flop" against Dunn's business. Jerry's wife did not have any malice in her "flopping," but these "flopers" have. (Continued laughter.) Mr. Williams, time and again during the course of his argument, with flourish of trumpets, challenged us to furnish him with an instance of singing being held a nuisance. I hold in my hand a report of a case made by the Hon. Thomas Hood. I presume, though, from the absence of legal vernacular in the report, Mr. Hood was not exactly an expert in the reporting of legal proceedings. The case is entitled "More Hullabaloo."<sup>80</sup>

Mr. Sloane here read Hood's humorous poem about the fellow who persisted in singing in London, "I Have a Silent Sorrow Here," interspersing the reading with running comments, and then proceeded:

The majority have not the right to compel the minority to believe as they do. Society has no right to interfere with my individuality unless I do some act which interferes with the rights of some member of it, or to society at large. Mr. Williams has expressed wonder at Dunn being annoyed by the singing of these ladies. Oh, yes, how sweet and soft and soothing he would have you believe those songs were: We presume he thinks that—

"Theirs is the lay that lightly floats  
And theirs are the murmuring, dying notes  
That fall as soft as snow on the sea,  
And melt in the heart as instantly,  
And the passionate strain that deeply going,  
Refines the bosom it trembles through,  
As the musk wind over the waters blowing,  
Ruffles the wave, but sweetens it too."<sup>81</sup>

Mr. Sloane embellished Judge Safford's theme that the crusading women were not in control of their actions, adding that "ladies have no idea of their legal abilities," "do not know the components of a promissory note," and "lose that respect which should be paid them" when they "forget their woman's sphere." He ended his peroration with a volley of comments comparing the crusading women to "Mahomedan" "dervishes" who go "before the door of the

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your unfeeling conduct. Look at your boy: he is your'n, ain't he? He's as thin as a lath. Do you call yourself a mother, and not know that a mother's first duty is to blow her boy out?" After his wife goes to sleep, Cruncher then goes on an adventure in a cemetery. CHARLES DICKENS, *A TALE OF TWO CITIES* 168-69 (Huber Gray Butler & Lawrence Mason eds., MacMillan 1923) (1859).

80. This refers to the poem "More Hullabaloo" in THOMAS HOOD, 4 *THE POETICAL WORKS OF THOMAS HOOD WITH SOME ACCOUNT OF THE AUTHOR* 160-67 (1863).

81. This poem is taken from SIR THOMAS MOORE, *LALLA ROOKH: AN ORIENTAL ROMANCE* 255 (Henry Altemus ed., 1895) (1817). Mr. Sloane's speech as a whole is found in *The Women's Prayer Meeting Injunction Suit at Hillsboro*, CINCINNATI COMMERCIAL, *supra* note 75.

person and howl” to “extort” a desired result.<sup>82</sup> Drawing laughter throughout his argument—presumably only from the non-crusaders in the audience—Sloane not only declined to accept the women as instruments of their own fates, but also he belittled their behavior and demeaned their reputations. It is hard to believe that the women, though quietly listening, were not seething in their seats, storing their anger for use in the ongoing temperance agitation and, later, in the suffrage movement. Reading such material makes palpable the ways in which men mocking the crusaders could “radicalize” them and turn them permanently into political actors.

But, it turned out that the use of humor and the atmospherics it created were much more complex than the remarks of Mr. Sloane alone suggest. He was not the only person to poke fun in the proceeding. The rejoinder by one of the defendants’ counsel, Mr. James H. Thompson,<sup>83</sup> also had its laugh-provoking moments:

The complaint here is that Mr. Dunn is disturbed in his business as a druggist. What is this drug store? They have admitted themselves that Dunn is a retail liquor seller; he sells under the flag of the United States, and he says that the ladies come to his place not to disturb him as a liquor dealer, but to prevent him from selling calomel and jalap (laughter) and sweet drugs for ladies. (Continued laughter.) He says “they have come here to prevent me from selling paregorio.” (Laughter.) Give me Dunn’s drug store and I can whip all the Modoc Indians in the country. (Laughter.) He is a pirate, sailing under the black flag, and he comes here and says the ladies are injuring him in the drug business. Does any one suppose that the women here would go to Dunn’s drug store to pray for him not to sell drugs? Such a thing would be ridiculous. (Laughter.) What is the law of Ohio upon this question? It is not necessary to travel down the Mississippi Valley to get the law. What is the rule your Honors are going to establish? And if every man had to be consulted as to what he considered a nuisance, how could we get along?

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Mr. Sloane and Mr. Collins say that the women have no right to pray and sing at Dunn’s drug-store, because he does not like it. When the children of Israel came across the Red Sea, and Miriam came out with a song,<sup>84</sup> I suppose if Judge Safford had been there, he would have

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82. *Id.*

83. Mr. Richard A. Harrison was also on the defense legal team. Harrison was born in Thirsk, England, and immigrated to the United States with his parents in 1832. The family settled in Ohio, where Harrison attended Cincinnati Law School and opened a practice in London, Ohio. Between 1858 and 1863 he served seriatim in the Ohio House of Representatives, the Ohio Senate, and the United States House of Representatives. He then practiced in Columbus, Ohio, until his death in 1904. See Richard Almgill Harrison, *Biographical Dictionary of the United States Congress*, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000274> (last visited Feb. 13, 2010).

84. This refers to the famous Song of Miriam, celebrating the liberation of the Israelites from Egypt after crossing the Sea of Reeds. *Exodus* 15:20-21 (Jewish Publication Society) reads: “Then Miriam, the



applied immediately for an injunction (laughter), and I have never heard that in the Jewish economy Miriam had ever been permitted to sing before that time. Are your Honors not bound before you stretch out your arms as Chancellors in this case, to see that this injunction has been properly applied for?<sup>85</sup>

While the women of Hillsboro were not the objects of Mr. Thompson's scorn, his jibes do pose analytical problems. Were the women comfortable with this sort of argument? Did they appreciate Thompson's humorous use of the Biblical character Miriam to critique Dunn's legal position and join in the laughter? Note that he took a very different approach than Mother Stewart in her previously described argument to the jury in the Adair Law case.<sup>86</sup> Rather than playing on the social obligations of men to protect "their" women, as Stewart did in her closing, Thompson focused on the hypocrisy of the saloon keepers. Did Thompson's statements, like those of plaintiffs' counsel, suggest comfort with the male atmospherics of the courthouse even when women were present? While we cannot know what Mr. Thompson was thinking, his statements might tell us something about the willingness of men to use humor in public settings where the crusader women would have abstained from such behavior.

The newspaper reports of the trial do not indicate whether the women defendants were laughing or silent during various parts of the permanent injunction hearing. But the earnestness of their religious convictions, their constant singing of hymns, the steadfastness of their actions in the saloons of Hillsboro, and the strength of their belief in the wisdom of shutting down the liquor trade suggest a seriousness of purpose at odds with the courtroom mood they encountered. Such a culture clash appeared not only in legal settings, but also in society at large. We certainly know that male humor was used as an acerbic critique of women who dared to enter the public, political sphere. Many documents, pamphlets, and posters distributed during the crusades and the subsequent prohibition movement portrayed women temperance advocates in an unflattering light. The "Temperance Prayer" is the harshest "humorous" item I have found.<sup>87</sup> Written in 1881 by Samuel J. Corcoran, presumably to be posted in saloons to induce the laughter of patrons, the screed's hostility to the crusaders and the female image they represented ran deep. Transforming

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prophetess, Aaron's sister, took a timbrel in her hand; and all the women went out after her in dance with timbrels. And Miriam chanted for them: 'Sing to the Lord, for He has triumphed gloriously; Horse and driver He has hurled into the sea!'" This short report often is referred to by religious feminists, especially in the Jewish tradition, who find importance in the reference to Miriam as a prophetess and her leadership of all the women present.

85. *The Women's Prayer Meeting Injunction Suit at Hillsboro*, CINCINNATI COMMERCIAL, *supra* note 75.

86. STEWART, *supra* note 53, at 32.

87. Samuel J. Corcoran, TEMPERANCE PRAYER (1881).

descriptions of fashionable forms of dress into images of prostitution, Corcoran used highly insulting language to denigrate the actions of crusading women:

O Lord! Have mercy upon these ladies; look upon them; they wear not even the color of the face which Thou hast given them, but they are sinning against Thee, and not content with nature, paint their faces. O Lord! Thou canst also perceive that their figure is not as Thou has made it; but they wear humps upon their backs like camels; Thou seest, O Lord!<sup>88</sup>

The images then move to ones of decay and disease. "That their head-dress consists of their false hair, and when they open their mouths Thou seest their false teeth. O Lord! These women want men who will patiently accept all this without using the power Thou hast given to man, that all women shall be subject to man."<sup>89</sup> Surely at some point the use of demeaning humor might have caused some, if not all, of the women crusaders of Hillsboro in attendance to sit uncomfortably in their seats as men made their arguments to the court.

The verbal repartee in the Dunn case was not all laced with jest. In fact, the speeches went on for days, concluding on February 20, 1874. "One cannot help but be surprised at and admire," one article in the newspaper opined, "the patience with which the ladies sit and listen during the whole day to the dry arguments upon purely legal technical points in the case, which are probably not understood by one-fourth of them."<sup>90</sup> Judge Safford closed the arguments for Dunn with a five-hour oration on February 19. Much of it dealt with aspects of nuisance law, whether the proper parties were named, and the correctness of the procedures used. Near the end, Safford levied a final attack on the agency of the women present. "The ladies erected the booth right in the teeth of that notice of Dunn," Safford claimed. "I am not blaming them for it," he continued, "but unfortunately they had raised a whirlwind and could not direct it." Once again denying their agency, Safford explained, "I think they never intended to transgress laws, but it was brought about by meddling men, and for their own purposes, and they prostituted the holy services of the church to the accomplishment of their purposes. There is nothing in woman that is aggressive; they, more than all others, feel the effects of intemperance. . . . It is a natural evil, and all Nations have suffered by it. And, ladies, let me implore you to desist, although you look upon me as everything that is bad." After making arguments that the traditional rules barring injunctions when damages can be determined or when remedies at law are adequate should not prevent the award of injunction relief in Dunn's case, Safford concluded, "You were fast becoming a village of slanderers . . . . In time of great excitement people must

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88. *Id.*

89. *Id.*

90. *The Injunction Case at Hillsboro*, CINCINNATI COMMERCIAL, Feb. 19, 1874. The tenor of this article suggests that the women silently endured the experience.

remember that the rights of individuals are to be protected and that the majority must respect the rights of the minority."<sup>91</sup>

At the conclusion of the arguments, the court dissolved the injunction on technical, procedural grounds unrelated to nuisance law.<sup>92</sup> We can only wonder whether the presence of so many women in the courtroom had any influence on the result. It is possible, though totally speculative, that Judge Steele used a procedural rule to appease the women of Hillsboro without demeaning the social standing of any of the parties before him. The denouement of the Palace Drug Store litigation was a bit anticlimactic. In addition to the injunction case, Dunn filed a damage suit seeking \$10,000. Apparently he won a judgment at trial but was awarded only \$5.<sup>93</sup> The injunction case was appealed to the Superior Court. Mother Stewart recollected that nothing much came of it.<sup>94</sup> Eliza Jane Trimble Thompson, another well-known crusader, recalled that the women elected not to demonstrate by the Palace Drug Store while the case was pending because "they had no desire, even in appearance, to defy the law,"<sup>95</sup> but, she added, "Dunn soon after took the benefit of the bankrupt law, and his assignee declined to defend the suit."<sup>96</sup> Dunn lost his economic footing because of increased public pressure to prosecute those violating state liquor law. He was charged with selling liquor by the drink on the premises and dispensing alcohol to minors, both violations of Ohio law. He was heavily fined and his business closed.<sup>97</sup>

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91. Judge Safford's closing argument is found in *Injunction Case at Hillsboro*, CINCINNATI COMMERCIAL, Feb. 21, 1874.

92. *Hillsboro Injunction Case—Decision of the Court—Injunction Dissolved*, CINCINNATI COMMERCIAL, Feb. 21, 1874. Dunn and his landlord Johnson attempted to use nuisance law to curtail the crusade's impact on trade at the Palace Drug Store. There is no easy way to describe the ways in which this area of law was used in the nineteenth century. Suffice it to say that relief typically was provided to land owners who found themselves subject to significant losses because of the way neighboring owners used their land. The crusade case was a bit unusual because the defendants were not landowners, but the legal claims of Dunn and Johnson certainly were not unreasonable. Indeed, what tripped up the plaintiffs in the minds of Judges Steele and Gray was not the weakness of the allegations made against the women but a procedural problem. Nineteenth century pleading and procedural law was rife with limitations on the use of court processes that have long since been discarded. Among them was a rule in Ohio requiring that when multiple parties joined together to bring a case, they all were required to have a valid cause against the defendants. In this dispute, the landlord Johnson was said not to have a valid claim. Access to relief in an equity court, the court noted, only was available when the remedies in a court of law were inadequate. In Johnson's case, the judges held, it would have been easy for a court of law to calculate the amount of any damages Johnson had suffered. He only held a remainder interest, the interest in the property remaining after Dunn's lease was over. If the demonstrations reduced the value of that interest, appraisers could figure out the size of the loss. Once the court concluded that Johnson could not seek injunctive relief, Dunn was shunted aside because of the procedural rule requiring that all plaintiffs have a viable equitable claim. The court, therefore, dismissed the case without deciding whether Dunn would have prevailed if he had brought the litigation by himself.

93. BLOCKER, *supra* note 5, at 59.

94. STEWART, *supra* note 53, at 96.

95. MRS. ELIZA JANE TRIMBLE THOMPSON, HER TWO DAUGHTERS, & FRANCES E. WILLARD, *HILLSBORO CRUSADE SKETCHES AND FAMILY RECORDS* 115 (1906).

96. *Id.* at 116.

97. *Id.*

In general, efforts to use the courts to suppress the crusades were not very successful. A result very much like that in the Hillsboro injunction case unfolded in Morrow, Ohio, about thirty-five miles to the northwest. A temporary injunction was obtained against 119 crusaders, all but fifteen of whom were women.<sup>98</sup> But after a second hearing in Lebanon, the injunction was dissolved. As in Hillsboro, an outpouring of women appeared in the courtroom. Beadle reported, "[T]he whole town of Morrow came over and emptied itself upon Lebanon. Forty women included in the list of defendants were among the crowd. These became the special guests of the Lebanon ladies, who gave them a public dinner." On the day the hearing began, "These forty marched from the church to the court-house in solemn procession. The excitement was intense in the town, and the case the only topic of conversation." The courtroom, Beadle observed, was seriously overcrowded. "The crowd occupied first the seats intended for the public, then they encroached upon the space reserved for the lawyers, and finally they inserted themselves behind the bar, and sat along side of Judge James M. Smith, who presided in this case as chancellor."<sup>99</sup> The image of forty women and their supporters marching through Lebanon to the courthouse is a telling reminder of how wrong Judge Safford was about the inability of crusading women to organize themselves, how crucial participation in legal proceedings was to their political education, and how important the court proceedings were in stimulating camaraderie and political awareness among these women.

Judge Smith delivered his decision in the Morrow case on March 7, 1874, concluding that the activities of the crusaders, if run against a lawful business, certainly would have been a nuisance but that the standard prohibitions against interfering with commercial operations did not bar actions to inhibit gambling and liquor sale operations that violated Ohio law. After the result was announced, a band marched down the streets of Morrow, "followed by an immense throng of men, women, and children, shouting and rejoicing."<sup>100</sup> The results of the two cases in Hillsboro and Lebanon must have convinced the saloon keepers of southern Ohio that nuisance litigation was not going to help them very much. They, like the crusaders, took up the mantle of politics instead once the streets of Hillsboro quieted.

Massive outbursts of public displeasure like the crusades eventually ebb. As liquor establishments closed and weariness replaced fortitude, the women and their male supporters returned to more normal lives and most of the saloons reopened. But the impact of the crusades was long lasting. The Ohio State Constitutional Convention of 1873-1874, the imminence of which may have stimulated the crusaders to take to the streets, was enlivened by vigorous

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98. The names of the defendants are provided in BEADLE, *supra* note 16, at 69-71.

99. For Beadle's entire report on the Morrow case, see *id.* at 72.

100. *Id.*

discussions of prohibition.<sup>101</sup> Reports about the debates and public meetings on the liquor issue commonly appeared in the papers during the spring of 1874. As the constitutional convention unfolded, women's temperance leagues from all over the state gathered together, organized, and set the groundwork for founding the Women's Christian Temperance Union.<sup>102</sup> The crusaders' experiences in the churches, streets, saloons, and courthouses of Ohio dramatically broke through the cultural and social barriers that had previously limited their public roles in law and politics. They were no longer afraid to make their feelings known in places previously occupied only by men. The Women's Christian Temperance Union eventually became the vanguard of a new suffrage movement.

### III. CONCLUSION: GENDER AND SPACE

Today the entry of a group of women into an American saloon is almost universally viewed as a non-event. It is difficult, therefore, to imagine how different the reactions were 135 years ago. Beadle discussed two crusade scenes involving interactions between men and women that contextualize the ways male and female spaces interacted and conflicted in Hillsboro. They provide a sense of the impact that women, dressed in their Sunday finery and publicly praying for intemperate souls, had on men. The first describes a story told to Beadle about a saloon scene as women entered a bar where a group of men "had ranged themselves in the familiar semi-circle before the bar, had their drinks ready and cigars prepared for the match." Their mood was interrupted "when the rustle of women's wear attracted their attention, and looking up they saw what they thought [was] a crowd of a thousand ladies entering." One of the men gathered at the bar saw his mother and sister. "[A]nother had two cousins in the invading host, and a still more unfortunate [man] recognized his intended mother-in-law!" The scene then took a comic turn. "Had the invisible prince of the pantomime touched them with his magic wand, converting all to statues, the tableau could not have been more impressive. For one full minute they stood as if turned to stone; then a slight motion was evident, and lager beer and brandy-smash descended slowly to the counter, while cigars dropped unlighted from nerveless fingers." The women began singing, "O, do not be discouraged. For

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101. The convention temporized on prohibition by calling for a referendum on the issue. The pro-liquor forces wanted a provision allowing for the licensing of bars. That provision was separated out from the constitution as a whole, voted on separately, and defeated in the 1874 election. The constitution as a whole, however, which provided for enforcement of the long-standing rules against selling liquor by the drink, was also defeated at the polls. The story is told in Bordin, *supra* note 1, at 397-98.

102. *State Convention of the Woman's Temperance Leagues of Ohio: Between Two and Three Thousand Persons in Attendance*, CINCINNATI COMMERCIAL, Apr. 23, 1874; *The Woman's Convention: Second Day's Proceedings*, CINCINNATI COMMERCIAL, Apr. 24, 1874.

Jesus is your friend." The men then made their escape, "scared out of a year's growth."<sup>103</sup>

This is a remarkable scene. The women who entered the bar, finely dressed, perhaps toting prayer books or hymnals, carried a "space" with them. Before the crusades such "spaces" were much more likely to be associated with a particular site—a church, a home, or the ladies' car of a train—where some women could exercise a modicum of authority. The ladies' cars were a particularly powerful example of the extent to which a domesticated space followed middle- and upper-class women as they moved around their worlds. As early as the 1840s, sometimes luxurious first-class cars were built for use by unaccompanied women or by wives and their husbands, children, and servants.<sup>104</sup> Smoking also was barred in these "Jane Crow" cars. Approval of such cars was widespread. The sentiments expressed in a Wisconsin case, with language evoking many of the same images used by Judge Safford to describe the women of Hillsboro, were typical. Judge Ryan, deciding whether a man was wrongfully denied passage in a women's car, wrote, "The use of railroads for the common carriage of passengers has not only vastly increased travel generally, but has also specially led women to travel without male companions. To such, the protection which is a natural instinct of manhood towards their sex, is specially due by common carriers."<sup>105</sup> In order to protect "women of good character . . . from annoyance and insult," the judge opined, "it appears to us to be not only a reasonable regulation, but almost if not quite a human duty, for railroad companies to appropriate a car of each passenger train primarily for women and men accompanying them." "It is a severe comment on our civilization," Judge Ryan complained, "that such a regulation should be necessary; but the necessity is patent to all experience and intelligence."<sup>106</sup>

Though ladies' cars began to disappear after the Civil War as train companies came under pressure to segregate public transportation on the basis of race rather than gender,<sup>107</sup> some continued to be used well into the twentieth century.<sup>108</sup> They were moving examples of the desire to protect proper women from men, spittoons, and the socially disfavored, while endorsing women's control over a domesticated "space." The crusaders broke such links between particular women's spaces and social control. The women discovered that the

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103. *Correspondence*, CINCINNATI COMMERCIAL, Feb. 2, 1874.

104. See ANTHONY J. BIANCULLI, 2 TRAINS AND TECHNOLOGY: THE AMERICAN RAILROAD IN THE NINETEENTH CENTURY 22 (2001).

105. *Bass v. Chicago & Northwestern Ry. Co.*, 36 Wis. 450, 458 (1874).

106. *Id.* at 460.

107. In an interesting series of cases, blacks claiming access to first-class cars initially obtained relief under state regulations requiring railroads to maintain such cars without regard to race. See, e.g., *Gray v. Cincinnati S. R.R. Co.*, 11 Fed. 683 (S.D. Oh. 1882). But by the end of the century, separate-but-equal rules took over, culminating in the infamous case of *Plessy v. Ferguson*, 163 U.S. 537 (1896).

108. For an image of a plush wood paneled car in use in 1926 in the Washington, D.C., area, see *Ladies' Car*: 126, <http://www.shorpy.com/node/4288/> (last visited Sept. 5, 2009) (image on file with author).

domestic authority they carried with them could be used not only to control domesticated space, but also to alter behavior in previously male domains. It must have been a heady experience for those crusaders who had never been socially active to walk into a saloon and see men drop their liquor and cigars before scurrying away with their tails between their legs. Exercising authority in new, highly public ways was exhilarating.

The second, brief account by Beadle is about a street scene fairly early in the Hillsboro campaign. "A fresh detail of women has just arrived, and after a lengthy prayer, are dealing out old 'Coronation'<sup>109</sup> in heart-moving tones," he wrote. "The townspeople go and come their accustomed ways with little notice, but it is curiously comical to notice strangers and country people. They begin to step gingerly about a square off; as they get nearer steadily soften their steps, and finally take off their hats and edge their way slowly around the open-air prayer-meeting as one would pass a funeral."<sup>110</sup>

In this tableau, the combination of public prayer and women's voices had a dramatic impact on those seeing the crusade as a novel experience. The religious and virtuous "space" the women carried with them seriously altered the behavior of men who approached it. But the impact was limited. It was only the "strangers and country people" who stepped "gingerly about a square off; as they [got] nearer steadily soften[ed] their steps, and finally [took] off their hats and edge[d] their way slowly around the open-air prayer-meeting." Many Hillsboro residents, however, by then inured to the sight of women kneeling in prayer on the streets, went about "their accustomed ways with little notice." For them, the shock was gone. The risk of expanding the places where women moved and exercised their moral authority was that some stopped noticing or caring.

So it was, at least in part, at the Hillsboro courthouse during the Palace Drug Store injunction hearing. The reactions of those men running the proceedings and arguing their points were not the same as those of the young "blood," slowly dropping his whiskey to the bar, or of the "strangers and country people" approaching the women praying on the street. They were perfectly willing to put the women back in their place, at least verbally. As Ulrich Sloane noted in his argument on Dunn's behalf, "when . . . [the crusaders] forget their woman's sphere they lose that respect which should be paid to them."<sup>111</sup> But, in a powerful way, it was that very reaction that may have convinced the women present that further steps were necessary to protect their interests, that intervening more often in public, political spaces was

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109. The first verse of this late eighteenth century hymn is: "All hail the power of Jesus' Name! Let angels prostrate fall; Bring forth the royal diadem, and crown Him Lord of all." DUNCAN MORRISON, GREAT HYMNS OF THE CHURCH 152 (1890).

110. Beadle, *Woman's Whisky War: The Hillsboro Battle*, CINCINNATI COMMERCIAL, Feb. 2, 1874.

111. *The Women's Prayer Meeting Injunction Suit at Hillsboro*, CINCINNATI COMMERCIAL *supra* note 75.

required to make their influence meaningful, and, eventually, that seeking the ballot was central to the ultimate freedom they wished to exercise.<sup>112</sup> Men flaunting their lack of concern about women's efforts to exercise moral authority led some women to alter their views about actively pursuing legal and political goals.

These women, drawn by the charismatic leadership of Frances Willard, gradually became the backbone of the Women's Christian Temperance Union. Willard, who became president of the Union in 1879, was a brilliant speaker, routinely melding the capacity of women for moral leadership with the need for substantial political and social reform. In her 1879 *Home Protection Manual*,<sup>113</sup> Willard wove domestic violence, the temptations of alcohol, the power of familial love, and womanly virtue into a politically inspired argument for women's suffrage:

Before this century shall end the rays of love which shine out from woman's heart shall no longer be, as now, divergent so far as the liquor traffic is concerned; but through that magic lens, that powerful sunglass which we term the ballot, they shall all convert their power, and burn and blaze on the saloon, till it shrivels up and in lurid vapor, curls away like mist under the hot gaze of sunshine. Ere long our brothers, hedged about by temptations, even as we are by safeguards, shall thus match force with force, shall set over against the dealer's avarice our timid instinct of self-protection, and match the drinker's love of liquor by our love of him. When this is done you will have doomed the rum power in America even as you doomed the slave power when you gave the ballot to the slave.<sup>114</sup>

Eschewing the egalitarian arguments made by Elizabeth Cady Stanton, Susan B. Anthony, and other suffragists who grew up in the abolitionist movement, Willard relied upon much more traditional ideas about female domesticity, moral virtue, and familial obligation to support her call for the ballot. It was a deft move that resonated with the conservative crusaders of southern Ohio who founded the Woman's Christian Temperance Union and their peers across the country. Willard turned their belief in the capacity of women to lead men to new heights of virtue into a reason to join the suffrage cause.

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112. In Ohio itself, suffrage came slowly. Beginning in the late 1880s, the General Assembly considered but rejected efforts to bring the issue of amending the state constitution to the voters. The required sixty percent majorities could not be mustered. But in 1894 Ohio women were given the right to vote for school officials and to sit on school boards. Suffrage was submitted to the voters in 1912 but failed. See 1 OHIO: A FOUR VOLUME REFERENCE LIBRARY ON THE HISTORY OF A GREAT STATE 336 (Simeon D. Fess ed., 1937). Full voting rights were not granted to the women of Ohio until the Nineteenth Amendment became part of the United States Constitution. Ohio was one of the first six states to ratify the amendment.

113. FRANCES E. WILLARD, *HOME PROTECTION MANUAL: CONTAINING AN ARGUMENT FOR THE TEMPERANCE BALLOT FOR WOMAN, AND HOW TO OBTAIN IT, AS A MEANS OF HOME PROTECTION; ALSO CONSTITUTION AND PLAN OF WORK FOR STATE AND LOCAL W. C. T. UNIONS* (1879).

114. *Id.* at 9.



In the long run, suffrage was not achievable without such a shift in perspective by rural, conservative women and men. Neither Western libertarians nor urban liberals could carry the day for suffrage when substantial numbers of Americans remained religious and conservative. During the time in which temperance and suffrage were subjects of national debate, urbanites constituted a minority of the population. Not until 1920 did the Census first show that a majority of Americans lived in urban areas. That also was the first year that the number of registered automobiles approached 10 million.<sup>115</sup> Though women's suffrage first gained a foothold in the West, their influence in Congress was relatively low. The help of women like those who filled the streets of Hillsboro—and their political descendants—was necessary to alter the Constitution. Amendments to our national charter are never adopted without firm support from large segments of the entire political spectrum. Both left and right saw the crusaders' successors as their darlings. Many progressives on the left were descendants of long-time temperance advocates and suffragists. And conservative, religiously based movements saw both prohibition and suffrage as allowing women to exercise their moral authority over the culture as a whole. It was no accident that the Eighteenth and Nineteenth Amendments were embedded in the Constitution at virtually the same historical moment.<sup>116</sup>

Our history is filled with examples of people claiming that the virtue and morality of women were beacons of enlightenment for society in general and men in particular. Though the claim is more attenuated now than in the late nineteenth and early twentieth centuries, we are all familiar with the idea in Carol Gilligan's 1993 classic, *In a Different Voice*, that women are more likely to be caring and other-directed and that these traits should be used to meet socially productive goals.<sup>117</sup> That Gilligan felt the need to tell us about this

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115. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL HISTORY OF THE UNITED STATES FROM COLONIAL TIMES TO THE PRESENT 11-12 (1976).

116. The Eighteenth Amendment on Prohibition, passed by Congress on December 18, 1917, and certified as ratified on January 29, 1919, provided:

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

U.S. CONST. amend. XVIII (repealed 1933). The Nineteenth Amendment on suffrage, passed by Congress on June 4, 1919, and certified as ratified on August 18, 1920, provided:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.

U.S. CONST. amend. XIX.

117. In one of many observations of the ways that a young boy called Jake and a young girl called Amy solved moral dilemmas, Gilligan observed that Jake and Amy created a "contrast between a self defined through separation and a self delineated through connection, between a self measured against an abstract ideal of perfection and a self assessed through particular activities of care." CAROL GILLIGAN,

possibility is a mark of how different our world is from that of a century or more ago. The women sitting in bars during the temperance crusades *knew*—as a matter of absolute truth for them—that they were more moral, virtuous, and caring than the men imbibing before them. They did not need Gilligan to tell them that they spoke with a different voice. They viewed their alternative voices as permanently wired. And it was the belief in that wiring that helped amend our national charter.

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IN A DIFFERENT VOICE 35 (1993). She sums up her work by observing that improved understanding of women’s development “could lead to a changed understanding of human development and a more generative view of human life.” *Id.* at 174.